UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
BRANCH OFFICE
SAN FRANCISCO, CALIFORNIA

UNITED FOOD & COMMERCIAL WORKERS UNION, LOCAL 648, UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, AFL–CIO (SAFEWAY, INC.)

and Case 20-CB-11846-1

CYNTHIA SCHAER, An Individual

Donald R. Rendall, San Francisco, California, for the General Counsel.
David A. Rosenfeld, of ***Weinberg, Roger & Rosenfeld,*** Oakland, California, for the Respondent.

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DECISION

Statement of the Case

JAMES M. KENNEDY, **Administrative Law Judge**: This case was tried in San Francisco, California on June 3, 2003, upon a complaint issued by the Regional Director for Region 20 of the National Labor Relations Board on March 20, 2003. It is based upon an unfair labor practice charge originally filed on November 26, 2002, [1] (amended on January 23, 2003) by Cynthia Schaer (Schaer), an individual. The complaint alleges that United Food & Commercial Workers Union, Local 648, United Food and Commercial Workers International Union, AFL–CIO (Respondent, the Union, or Local 648) has engaged in certain violations of §8(b)(1)(A) and (2) of the National Labor Relations Act (the Act).

Issues

The principal issue is whether Respondent properly notified Schaer, an employee of Safeway, Inc., of her rights as recognized under the Supreme Court's decisions in *NLRB v. General Motors*, 373 U.S. 734 (1963) and *Communications Workers of America v. Beck*, 487 U.S. 735 (1988) and whether, if it failed to do so, it was privileged to demand her discharge under the union shop clause of the collective bargaining contract for failing to pay the initiation fee and dues. If it was not so privileged, a subsidiary issue is what remedy or remedies should be applied.

[1] All dates are 2002 unless otherwise indicated.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by both the General Counsel and Respondent, I make the following

Findings of Fact

I. Jurisdiction

Respondent admits Safeway, Inc., is a corporation operating in San Francisco, California where it runs a chain of retail supermarkets, including one located at 220 Market Street in that city. It admits Safeway's annual gross volume of sales exceeds $500,000 and that it annually purchases goods valued in excess of $5000 from sources originating outside California. Accordingly, Respondent admits and I find that Safeway is an employer engaged in commerce within the meaning of §2(2), (6), and (7) of the Act. Furthermore, Respondent admits that it is a labor organization within the meaning of §2(5) of the Act, and I so find.

II. Alleged Unfair Labor Practices

Respondent and Safeway are bound to a multi-employer collective bargaining contract which was in effect at the time of the transactions described here. That collective bargaining contract contains a union shop clause which requires employees to become union members on or after the thirtieth day of their employment.

Schaer was hired on February 22 as a trainee but only worked part-time. Her first assignment was as a personal shopper for the "dot-com" portion of the Market Street store. Later, perhaps still in March, she occasionally worked in the deli section of the store. She was actually transferred to the deli in May and continued to work part-time until her discharge. For her, part-time amounted to 24 hours per week or so. The record does not clearly show what her hourly wage rate was at the deli, although it seems to have been in $8-9 range, given her level of experience. [2]

Having learned from some source that she had to join the Union, on April 30, Schaer, went to its office and filled out an application for membership. There she spoke to a person identified in the record only as "Elsa." Elsa is one of the women who worked at the office and handled membership applications. Schaer says Elsa told her the initiation fee was $300. During the process, Schaer told Elsa that she was having financial difficulties and asked for some easy way of paying the initiation fee and the dues. She testified that Elsa told her a payment schedule could be worked out, and one was. It is in evidence as G.C.Exh. 6. Although Elsa did not testify, there is no disagreement that during this transaction that neither Elsa nor anyone else from the Union informed Schaer that she could pay a lesser amount of dues and fees than what the Union required under its constitution and by-laws. No one told her

[2] At the time Schaer was hired she was 47 years old. She is well educated and has a law degree from the Cardozo School of Law in New York City. She has been admitted to practice in New York, but not California. Before obtaining employment with Safeway, she had been working as a security guard for 3 years. She says she has not been actively practicing law for a number of years. She gave some peculiar testimony regarding her right to appear in the Northern California federal district courts despite lacking a California license, but it is not germane to the issues presented here. Her life as a lawyer seems to be far behind her.

she could whittle the amount owed down to a "financial core" (as described in *General Motors*, supra) or told her that she was entitled (under *Beck,* supra) to know what the non-representational portion of the dues and fees were, so she could decline to pay them. Nor is there any written reference to those rights set forth in the membership application. [3]

Not aware of any legal right to a reduced initiation fee or dues, Schaer signed the payment schedule proffered by Elsa. The schedule required the payment of $326 over a period of 3 months. It required $50 payments on May 9, May 23, June 6, June 20 and July 5 and July 18. A last payment of $26 was due on July 25.

Furthermore, it set August 15 as the date of Schaer's initiation into the Union. In addition, as a condition of acceptance of the payment schedule, Schaer was obligated by its terms to "abide by the by-laws and working rules of the Union." Finally, it concluded with an acceleration clause stating that failure to pay per the schedule would result in the entire unpaid amount becoming due immediately, that the employer would be informed and that the failure to pay dues and initiation could result in the termination of her employment.

It is unclear from the evidence what the payments were for. Specifically, union officials have written on her application some things regarding the schedule, though Schaer never saw the writing. The handwritten material and a connected printout suggest that the initiation is $210 rather than the $300 described by Elsa to Schaer. The Union's business agent, Gilberto Mendoza [4] said the initiation fee depends on the employee's job classification. Uncertain, he opined that it was $300 for food clerks. In addition, the handwriting on the application also refers to dues as being $29 rather than $26, which the last proposed payment suggests. Mendoza said the lowest level of dues he knew of was $27.50 for a courtesy clerk. What were the amounts for a part-time personal shopper or a junior deli clerk? That cannot be determined from the testimony or the documentary evidence.

Moreover, it is not clear to what month(s) the dues portion was being allocated. Section 8(a)(3) of the Act bars Respondent from collecting dues for the first 30 days of employment. Yet, the payment schedule does not show what the monthly dues allocation was. Respondent did not offer any evidence about that, although it easily could have called Elsa or provided a dues ledger card or printouts regarding Schaer. Apparently it was not interested in demonstrating that it honored the statutory grace period. It is certainly not clear that the payment schedule was solely aimed at prospective dues from April 30 forward. And, the printout it did provide is almost incomprehensible, except for the dates Schaer made payments. It shows that on May 16 she paid $45, on May 31, $42 and $13 ($55), on July 5, $50, and on July 11, $50, for a total of $200. She made no other payments.

Mendoza became aware of her supposed delinquency sometime in August or September. He says he tried to reach her by telephone on as many as five occasions, leaving a message on her answer machine asking her to return his call. He says she never did.

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[3] The application does contain an obscure reference (in a minuscule, barely readable, font) to some litigation over the subject of initiation fees and dues, offering to answer questions about the suit if the applicant had any. At the time the Union presented Schaer with this application there was no active litigation in progress (save for, according to Respondent's counsel, a 1988 case long stalled in the Court of Appeals for the Ninth Circuit). Whatever the facts are concerning any supposed litigation then pending, this obscure paragraph did not provide an applicant with any breakout of fees and dues allocations, nor did it even acknowledge that any dues and fee reductions were available.

[4] Mendoza was a newly-appointed business agent, having been hired on June 17. There is no record evidence about his prior experience or knowledge.

About that time, Schaer had come to believe that Safeway was not providing her with the minimum number of hours per week required by the collective bargaining contract for a part-time employee. The accuracy of her belief is not of concern here (and was not litigated). She says Mendoza telephoned her and advised her that she needed to pay the entire amount in full, since she had not met the requirements of the payment plan. She says she responded with her complaint about insufficient hours and the connected inability to pay. She also testified that Mendoza told her he would not help her with her short-hours complaint until she paid the money owed to the Union.

Mendoza testified that the short hours discussion occurred earlier, perhaps in July or August. He says he told her he would look into it, and denies saying that he would only look into that issue once she was paid in full. His testimony suggests that delinquent dues and fees were not a part of that discussion.

According to Mendoza when, in September or early October, Schaer had failed to respond to his telephone calls, he assigned the Union's service agent, Alan Lawson, to serve her with a 7-day warning letter at the store. Lawson did so on Friday, October 4. The letter warned that in the event she did not pay within 7 days the outstanding amount in full, which the Union said was $188, [5] it would demand that Safeway discharge her. Although testimony was presented regarding Lawson's two visits to the store on that day, it is clear that the letter was delivered. Schaer never paid the money, nor did she go to the Union's office before the deadline to deal with the issue, although she had told Lawson she would. Seven days later, on October 12, Safeway discharged her at the Union's request.

Approximately 3 weeks after the discharge, Schaer had an additional conversation with a union official, this time Local 648's president Mary Chambers. There is some disagreement regarding what was said regarding dues amounts and reduced rates and plans, but it is unnecessary to resolve it. It occurred well after the discharge and is irrelevant to any issue raised by the complaint.

III. Analysis and Conclusions

After the Supreme Court decided *Beck*, the Board issued two decisions dealing with the manner in which labor unions were to manage the requirements imposed by *Beck* as well as its interconnection to *General Motors*. The cases were *California Saw & Knife Works*, 320 NLRB 224 (1995) [6] and *Paperworkers Int'l Union and its Local 1033 (Weyerhaeuser Paper Co.)*, 320 NLRB 349 (1988). [7] Together, dealing not only with union members and nonmembers, but with new hires, the two cases require labor unions under the doctrine of fair representation to inform all of those employees whom they represent about two matters: First, the fact that employees may satisfy their union security obligation by paying only financial core membership levels (under *General Motors*) and avoiding full membership as defined by the union's constitution. Second, that represented employees (whether members or not) could object and decline to pay (under *Beck*) for expenses unrelated to the union's representational obligations, e.g., expenditures for political purposes and the like. In addition, the Board said, for the employee to

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[5] The $188 calculation is not explained. Schaer had paid $200 of the plan's $326 and the difference is only $126, not $188. A possible explanation is that additional months dues were now being included. However, there is no record evidence on the point. The October 4 letter contains no explanation whatsoever.

[6] enfd. 133 F.3d 1012 (7th Cir. 1998), cert. den., sub nom. *Strang v. NLRB*, 525 U.S. 813 (1998).

[7] rev'd on other grounds sub nom. *Buzenius v NLRB*, 124 F.3d 788 (6th Cir. 1997), judgment below vacated and remanded, sub nom. *Paperworkers v. Buzenius*, 525 U.S. 979 (1998).

have sufficient information to intelligently make a *Beck*-rights decision, the union had to provide allocation breakdowns so an objector could knowledgeably challenge the figures provided by the Union. [8] The latter issue is not directly presented in this case, but is part of the overall scheme which a union must follow to provide its represented employees information about their legal rights under a compulsory membership system in order to satisfy its duty of fair representation.

In addition, the Board has long held that a labor union has a fiduciary responsibility to the employees it represents in the sense that it must accurately [9] advise them of the amount of the dues delinquency, that his/her job is in jeopardy and give the employee a reasonable amount of time to pay before demanding and effecting the discharge. *NLRB v. Hotel, Motel and Club Employees' Union Local 568 (Philadelphia Sheraton Corp.)*, 320 F.2d 254, 258 (3d Cir. 1963), enfg. 136 NLRB 888 (1962); *Conductron Corp.*, 183 NLRB 419, 426 (1970); *Rocket and Guided Missiles Lodge 946, IAM (Aerojet-General Corp.)*, 186 NLRB 561 (1971); *Ironworkers Local 378 (Judson Steel),* 192 NLRB 1069 (1971); and *Boilermakers Local 732 (Triple A Machine Shop)*, 239 NLRB 504 (1978) and many others.

With respect to the facts presented here, it is clear that at no time did Respondent ever advise Schaer of her right to pay anything less than what Elsa told her she would have to pay. There was no presentation of a *General Motors* financial core option or of a reduced rate under *Beck*. Elsa only presented Schaer with a single option, payment in full (albeit under a time payment plan) leading to constitutional membership. Indeed, her initiation date was even placed on the payment plan. Clearly Respondent had no interest in providing her with any information consistent with *California Saw* or *Weyerhaeuser*. It wanted Schaer to be a constitutional member and did not want to tell her she had any other options. This, itself, violated its duty of fair representation and §8(b)(1)(A). Specifically, see, *L. D. Kichler Co. (Electrical Workers, (IBEW) Local Union 1377)*, 335 NLRB No. 106 (2001) ("[W]e agree with the judge that the Union violated Section 8(b)(1)(A) when it solicited Joynt's membership in the Union without providing notice of her rights under *General Motors* and *Beck*.") Sl. op. at 3

And, the Board has held that demanding and causing an employee's discharge under such a fact pattern is a clear violation of §8(b)(1)(A) and (2). See *Production Workers, Local 707 (Mavo Leasing)*, 322 NLRB 35 (1996), enfd. 161 F.3d 1047 (7th Cir. 1998). The reasoning of that case is very simple. If a union operating under a union security clause fails to provide its

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[8] See *Teamsters Local 166 (Dyncorp Support Services)*, 327 NLRB 950, 952 (1999), remanded, enf. den. sub nom. *Penrod v. NLRB*, 203 F.3d 41 (D.C. Cir. 2000). (There, the court of appeals held that the breakout information should be provided to the applicant at the time s/he becomes obligated to join the union. The Board has not yet spoken regarding whether it has accepted the court of appeals' analysis.

[9] It should not need to be said that accurate dues payment records are always required. The union is a fiduciary in this regard. Accuracy is the only way to determine whether the statutory grace period has been met and the only way to determine whether an employee is actually in arrears. An example of such a failure can be seen in *Alcoa Construction Systems, (Millmen's Union Local No. 338)*, 212 NLRB 452 (1974). The information should also be transparent and shown to the employee as part of the union's demand for payment of any dues/fees arrearage. Identification of the payments' purpose is certainly required in order to determine whether moneys are aimed to satisfy the periodic dues requirement of §8(a)(3) or whether the money is for assessments, which may not be compelled under a union security clause. *NLRB v. Food Fair Stores*, 307 F.2d 3 (3d Cir. 1962). The same is true for fines. *Thermador Div. of Norris Indus.*, 190 NLRB 479 (1971); *The Electric Auto-Lite Co.*, 92 NLRB 1073 (1951), enfd. 196 F.2d 500 (6th Cir. 1952), cert. den. 344 U.S. 823 (1952).

represented employees with *Beck* information, and the employee fails to pay his/her dues and fees, the union may nevertheless not cause the employee's discharge. If it does so, it violates §8(b)(1)(A) and (2). That is exactly what happened here. See also, *Teamsters Local 251 (Ryder Student Transportation)*, 333 NLRB No. 129 (2001), n. 3. Citing *Mavo Leasing* the Board said there: "A union ordinarily may not lawfully seek to have an employee discharged for failing to pay dues under a union-security clause when it has not informed the employee of his or her *Beck* rights."

When Schaer failed to pay, Local 648 continued to fail to treat her in accordance with its duty of fair representation. It did give her a figure stating the amount due and owing, but that figure is not clearly explained. It does not show what amount had been allocated to dues and what had been allocated to initiation. Indeed, if her initiation fee was actually only $210 (as shown in the handwritten notation and the printout) rather than the $300 Elsa required, it was not treating her in a uniform manner and was affirmatively misleading her from the very beginning. She was entitled, under that theory, to a $90 credit. Moreover, there is no showing that the Union did not seek to collect dues from Schaer's first 30 days of employment. No evidence was offered concerning what months' dues had been covered or that the statutory grace period had been honored.

Thus, the figure given her, the difference between what she had agreed to pay and what she had actually paid, has not been demonstrated to be an accurate assessment of even what her constitutional obligations were. The figure is subject to too many questions, entirely unanswered by the Union's record-keeping. I cannot conclude that Respondent met its *Philadelphia Sheraton* fiduciary duty to accurately provide her with the correct amount due. On that basis alone the demand to discharge her violated §8(b)(1)(A) and (2), even aside from the *Mavo Leasing* theory.

The harder question is whether §10(b) of the Act may be used to insulate the Union when it essentially defrauded Schaer at the time she tried to meet the requirements of the union shop clause. Respondent, as its second affirmative defense set forth in its answer to the complaint, has asserted that the complaint is barred by §10(b) of the Act because of the passage of more than 6 months. Curiously, the General Counsel has made no effort to meet that defense. Even so, the answer must be a clear "no". The defense will not lie.

In pertinent part §10(b) states:

> ". . . no complaint shall issue based upon any unfair labor practice charge occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made. . . ."

Schaer applied for membership on April 30. While both the demand for her discharge and the actual discharge occurred on October 12, she did not actually file an unfair labor practice charge until November 26 about 3 weeks after the literal expiration of the 6-month limitations period as it concerned the Union's April 30 deception. At the time Schaer applied she asked Elsa if there were any "alternatives" to paying union dues and fees. Elsa never told Schaer that there were or that those that did exist included the *General Motors* and *Beck* rights. Therefore, I find that Respondent's active effort to conceal from Schaer her right to *General Motors* and *Beck* information is sufficient to toll the limitations period. *Don Burgess Construction*, 227 NLRB 765 (1977), enfd. 596 F.2d 378, 383 (9th Cir. 1979), cert. den. 444 U.S. 940 (1979). Also, *Frontier Hotel*, 318 NLRB 857, 876-877 (1995). This is particularly so, where the information concealed is part of the duty of fair representation. It was vital

information which should have been disclosed even without Schaer's request for alternatives. Accordingly, I find that Local 648 violated §8(b)(1)(A) on April 30 when it failed to advise her of information concerning reduced dues and fees, information which would have satisfied the duty of fair representation under *California Saw* and *Weyerhaeuser*.

Furthermore, I find that the two violations are connected by union policy. The policy, as it applied to Schaer, was that from the outset it would not notify her that she had any option other than to pay the full amount that a constitutional member would pay (if not more, under this particular time payment plan). Then, continuing that theme, knowing that a time payment plan applicant was likely to be in financial straits, the Union would allow for a payment schedule, whose accuracy was dubious, but which contained an acceleration clause in the event of nonpayment. In the event of a default, it could simply allow the acceleration clause to operate, knowing that anyone in full arrears was unlikely to be able to pay in full, thereby triggering the discharge. This would allow the Union to start anew with the next applicant whose payment record might be better.

Respondent has violated §8(b)(1)(A) and (2) as alleged.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Respondent having discriminatorily caused Safeway, Inc., to discharge Schaer, it will be ordered to notify Safeway, in writing, with a copy to Schaer, that it has no objection to her employment and that it affirmatively requests Schaer's reinstatement. Respondent shall also be ordered to notify Schaer of her rights under *General Motors* and *Beck* and to inform her that she is not subject to discharge or suspension for nonpayment of union dues in the absence of such notification. In addition, Respondent will be ordered to make Schaer whole for any loss of wages and benefits she may have suffered as a result of its conduct until she is either reinstated by Safeway to her former or a substantially equivalent position, or until she obtains substantially equivalent employment elsewhere, less net interim earnings. Backpay shall be in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). [10]

Respondent has requested that I note that the treatment given Schaer is not in accordance with the policies currently in place designed to apprise employees of their *General Motors* and *Beck* rights. In this regard it has presented R.Exh. 4, said to be the current application form. The top of the front side of the document contains what might be characterized as standard information material, such as the applicant's name, address, telephone number, etc., together with a signature line for the employee. It is aimed only at constitutional membership. There is no reference to any other kind of membership. The bottom includes a box preprinted for installment payments should the applicant need time to pay. That portion is similar, if not identical, to the agreement Schaer signed. Nothing on that side of the sheet touches upon *General Motors* or *Beck* rights.

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[10] Backpay is an appropriate remedy against a labor union which has caused a discriminatory discharge, even absent complicity of the employer. *Iron Workers, Local No. 111 (Northern States Steel Builders)*, 298 NLRB 930 (1990), enfd. 946 F.2d 1264 (7th Cir. 1991). See also, *Sheet Metal Workers' Union Local 355 (Zinsco Electrical Products),* 254 NLRB 773, (1981), enfd. in pertinent part, remanded in part on other grounds. 716 F.2d 1249 (9th Cir. 1983).

It is on the back side of the sheet that Respondent finally mentions *Beck*; it does not mention *General Motors* at all. I believe that omission alone is fatal to any contention that the current system passes muster. But more than that, the material is classic in its attempt to bury employee rights in grayed-out fine print. It is set in a reader unfriendly block of gray legalese. It is clearly an effort to continue to conceal the employees' rights. It is a continuation of the policy which I cited above: Keep the employees as far from their rights as possible while giving lip service to the claim that knowledge about them is readily available; do not offer the information in a format which can easily be understood as such information can only be regarded as inimical to the Union's financial well-being.

For that reason, I find that the format as expressed in R.Exh. 4 is really only an effort to continue Respondent's antithetical attitude toward complying with its obligations under *General Motors*, *Beck*, *California Saw* and *Weyerhaeuser*. Respondent simply will not embrace its obligation to advise the employees it represents of the rights they have. This failure is the same as if a fiduciary declined to apprise its client of important information, such as a right to an inheritance or a right to medical information about oneself. A remedy would lie in those situations and one will lie here as well. Accordingly, I shall give Respondent's supposed effort no weight and I specifically reject it as an effort to meet its duty of fair representation. Respondent must do more.

Therefore, I will recommend a remedy which meets that duty, to fully inform employees of all dues-connected rights set forth in the Act. To do otherwise would make the Board complicit, by omission, in denying fundamental information to employees about their dues-connected rights established by Congress and the Supreme Court. The remedy will include an order requiring Respondent affirmatively to provide the information to new applicants prior to the applicant being given an application for full union membership. The information will, in simple English (or an appropriate foreign language), describe the various options available to the applicant which will satisfy the union security requirement of the collective bargaining contract, including a statement of rights under §19 of the Act relating to employees holding certain religious convictions. The information must be in an easily read format printed on a separate document which the employee may keep; Respondent must also give the applicant the opportunity to read the document and understand it before it proffers a membership application of any kind to the applicant. The information document will also provide accurate information regarding the grace period required by §8(a)(3) of the Act, together with the various amounts of money required for each level of membership, showing breakdowns for initiation and for monthly dues. It shall further break those amounts down to show clearly, for purposes of the employee's intelligent comparison, the full membership amounts, financial core membership amounts, the nonrepresentational portion, and the amount which would be due when the nonrepresentational portion is subtracted from the full membership amounts. Cf. *Penrod v. NLRB*, 203 F.3d 41 (D.C. Cir. 2000). The nonrepresentational amount may be shown as a total, but the document shall state that upon the employee's request, the Union will separately provide figures necessary to meet the calculation challenge right available under *Beck*. Respondent may, if it chooses, also include on that document a list of benefits available to full members but which are not available to financial core members or *Beck* members, so long as the *General Motors/Beck* rights and connected figures are not obscured in any way by the additional information. It may also accurately explain that the employees' failure to meet the financial obligation can result in the applicant's loss of employment.

Finally, the information document will describe for the applicant the internal procedures for filing objections to Local 648's calculation of the nonrepresentational amounts.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended [11]

ORDER

Respondent, United Food & Commercial Workers Union, Local 648, United Food and Commercial Workers International Union, AFL–CIO, its officers, agents, and representatives, shall:

1. Cease and desist from

(a) Seeking to obligate any employee, who is subject to a union security clause, to pay union dues and fees without first informing him or her of their right to pay dues and fees in an amount covering only representational activities.

(b) Soliciting employees, who are subject to a union security clause, for union membership without first advising them that they may limit their membership to the payment of periodic dues and fees uniformly required or that they may pay a reduced amount covering only representational matters.

(c) Failing to notify bargaining unit employees, when it first seeks to obligate them to pay fees and dues under a union-security clause, of their right under *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963), to be and remain nonmembers,

(d) Failing to notify bargaining unit employees, under *Communications Workers v. Beck*, 487 U.S. 735 (1988), that they can object to paying dues and fees for union activities that are not germane to the Respondent's duties as bargaining agent and to obtain a reduction in dues and fees so as not to pay for such activities.

(e) Requesting and causing the termination from employment of Cynthia Schaer, or any other employee, prior to informing them of their right to pay dues and fees attributable only to representational activities, and prior to providing the employee with a demonstrably correct calculation of the amount of any delinquency, and providing the employee with a reasonable opportunity to pay that amount.

(f) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by §7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Notify Safeway, Inc., in writing, with a copy to Cynthia Schaer, that it has no objection to her employment and affirmatively request Safeway to reinstate her.

(b) Advise Cynthia Schaer of her rights under *General Motors* and *Beck* and inform her that she is not subject to discharge for nonpayment of union dues in the absence of such notification.

(c) Make Cynthia Schaer whole for any loss of earnings and other benefits suffered as a result of the discrimination against her in the manner set forth in the Remedy section of this decision.

[11] If no exceptions are filed as provided by §102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in §102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(d) Whenever an employee seeks to comply with the union security clause of the collective bargaining agreement, Respondent shall first provide the employee with an information document separate and apart from the membership application. The information document shall be in simple language, whether English or a foreign language appropriate to the employee, and it shall be in a format which can be easily understood. The document shall describe the various options available to an employee which will satisfy the requirements of the union security clause of the collective bargaining agreement. Respondent shall, prior to proffering any membership application, give the employee an opportunity to read and understand the information in the document. The information provided shall include:

(1). Accurate information regarding the grace period required under §8(a)(3) of the Act and a statement of rights under §19 of the Act relating to the union membership rights of employees holding certain religious convictions.

(2). The amount of money required for each level of membership and shall show breakdowns for initiation and monthly dues for: (i) full membership; (ii) financial core membership; (iii) the nonrepresentational portion; and (iv) the amount due when the nonrepresentational portion is subtracted from the full membership amount.

(3). A description of the Union's internal procedures which an employee may use if he or she chooses to challenge the calculations of nonrepresentational fees and dues provided by the Union.

(e) Within 14 days from the date of this Order, remove from its files, and ask Safeway, Inc. to remove from the Employer's files, any reference to Cynthia Schaer's unlawful discharge and, within 3 days thereafter, notify Cynthia Schaer in writing that it has done so and that it will not use the discharge against her in any way.

(f) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its office in San Francisco, California, copies of the attached notice marked "Appendix." [12] Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where official notices are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the union office involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current members and individuals who were members at any time since April 30, 2002.

[12] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

(h) Sign and return to the Regional Director sufficient copies of the notice for posting by Safeway, Inc., if willing, at all places where notices to employees are customarily posted.

(i) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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James M. Kennedy
Administrative Law Judge

Dated: September 16, 2003

"Appendix"

NOTICE TO MEMBERS and REPRESENTED EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain collectively on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities

WE WILL NOT fail to notify bargaining unit employees, when we first obligate them to pay fees and dues under a union security clause, of their right to be and remain nonmembers under the Supreme Court's decision in *NLRB v. General Motors*, 373 U.S. 734 (1963), *and* **WE WILL NOT** fail to notify them of their right to object to paying dues and fees for activities that are not germane to our duties as their bargaining agent and thereby obtain a reduction in dues and fees for such activities under the Supreme Court's decision in *Communications Workers of America v. Beck*, 487 U.S. 735 (1988).

WE WILL notify **Cynthia Schaer** in writing of her right under *General Motors* to be and remain a nonmember and of her right under *Beck* as a bargaining unit employee to object to paying for union activities not germane to our duties as bargaining agent and to thereby obtain a reduction in dues and fees for such activities. The notice will also include sufficient information to enable her to intelligently decide whether to object to our calculation, as well as a description of our internal union procedures for filing objections to our calculation.

WE WILL NOT cause or attempt to cause Safeway, Inc., to discharge **Cynthia Schaer** or any other employee for failing to pay union dues and/or initiation fees pursuant to a union security clause where we have not first notified them of their *General Motors* and *Beck* rights, accurately advised them of the amount of their arrearage (showing them the calculation) or afforded them a reasonable opportunity to pay the sum actually owed.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by §7 of the National Labor Relations Act.

WE WILL notify Safeway, Inc., in writing, with a copy to **Cynthia Schaer**, that we have no objection to her employment and **WE WILL** request Safeway to reinstate her.

WE WILL make **Cynthia Schaer** whole for any loss of wages or other rights and benefits she may have suffered, together with interest, as a result of our unlawful conduct.

WE WILL change our procedure with respect to membership solicitation to comply with the Remedy ordered in the Decision. This means before soliciting membership under a union security clause **WE WILL** first provide the applicant with an information document fully describing the membership options available under Federal law. To assist the applicant to make an informed decision concerning his or her choice, the information will include cost comparisons between full membership under our constitution and bylaws and membership for union security purposes as permitted both by the National Labor Relations Act and case law, including *General Motors* and *Beck*. The information will include a description of our internal procedures for filing objections to our calculation of the nonrepresentational costs. No applicant will be presented with a membership application until we have provided him or her with a reasonable opportunity to understand the choices available.

WE WILL, within 14 days from the date of the Board's Order remove from our files, and ask Safeway to remove from its files, any reference to the discharge of **Cynthia Schaer** and we will within 3 days thereafter, notify her in writing that we have done so and that we will not use the discharge against her in any way.

UNITED FOOD & COMMERCIAL WORKERS UNION, LOCAL 648, UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, AFL–CIO

(Labor Organization)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: **www.nlrb.gov**.

901 Market Street, Suite 400, San Francisco, CA 94103-1735

(415) 356-5130, Hours: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (415) 356-5139.